Proposed Rules

Federal Register
Vol. 62, No. 219
Thursday, November 13, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AF88

Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its Rules of Practice for the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository (HLW proceeding). The proposed amendments are intended to allow application of technological developments that have occurred since the original rule was adopted in 1989, while achieving the original goals of facilitating the Commission's ability to comply with the schedule for decision on the construction authorization for the repository contained in Section 114(d) of the Nuclear Waste Policy Act, and providing for a thorough technical review of the license application and equitable access to information for the parties to the hearing.

DATES: Submit comments by January 27, 1998. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments by mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Kathryn L. Winsberg, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1641, e-mail KLW@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The existing procedures for licenses to receive high-level radioactive waste at a geologic repository were developed to address the Nuclear Regulatory Commission's concern regarding how best to review the U.S. Department of Energy (DOE) license application for a first-of-a-kind high-level radioactive waste (HLW) repository during the 3-year time period dictated by Section 114(d) of the Nuclear Waste Policy Act. The Commission believed it necessary to reduce the time normally spent on the discovery process at the start of a licensing proceeding and the time-consuming service of documents during the proceeding if the Commission were to reach its decision within the allotted time. The Licensing Support System (LSS) concept, an electronic information management system, was created to achieve this time reduction by making the information and data supporting a DOE application available simultaneously in a centralized database to all interested parties before the application is submitted and formal NRC review begins. Emerging information management technologies for issue identification, electronic storage and retrieval, and electronic mail were recommended for these functions to help achieve the objectives of more effective and efficient review.

The Commission employed the technique of negotiated rulemaking to develop the regulations governing the development and use of the LSS. Negotiated rulemaking is the process by which the agency and the interests affected by a rulemaking meet to attempt to reach a consensus on a draft proposed rule. If a consensus is reached, the agency publishes the negotiated rule as the agency's proposed rule. The Commission selected the negotiated rulemaking approach to address the LSS issue for several reasons. In 1987, the idea of use of an electronic information management system in a Commission adjudicatory proceeding was novel, not only for the Commission, but in general. Therefore, the development of the rules for the use of such a system would benefit from discussion and joint problem solving by those who might ultimately use the system and had experience with the Commission's traditional adjudicatory process. Furthermore, the potential users of the LSS possessed unique information that would be important to the design of the system, such as their computer capability and the amount and types of relevant documents that they might generate. In addition, the potential for consensus was enhanced by the fact that the LSS rule focused on procedures for conducting the licensing process that might benefit all parties, rather than focusing on substantive technical criteria for a licensing process. Finally, the success of the LSS concept depended upon potential parties voluntarily complying with the licensing process for document identification and submission in the period before the DOE license application was submitted. Therefore, the involvement of interested parties in the development of the provisions to govern the use of the LSS was essential.

The Commission initiated the negotiated rulemaking in August 1987. The negotiating committee, composed of State, local, and tribal governments, industry representatives, NRC, DOE, and environmental groups, completed its work in July 1988. Except for the industry coalition, all the parties on the negotiating committee agreed on the text and supplementary information of a draft proposed rule. However, even the one dissenting party, the industry representative, had been a full and active participant in the drafting of the regulatory text and supporting information. Industry did not join the final consensus at the end of the process based on its belief that the use of a new technology in the licensing process

would not prove cost-beneficial. At that time, the cost of the LSS was estimated by DOE to be in the $200 million range. The Commission, recognizing the agreement among the other parties on the negotiating committee, decided to publish the negotiated draft proposed rule as the Commission's proposed rule in November 1988. Because of this effort, the final LSS rule (10 CFR part 2, subpart J), ''Procedures Applicable to Proceeding for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository'', was promulgated on April 24, 1989 (54 FR 14925).

The LSS rule assigned the LSS Administrator (LSSA) function to the NRC which would be responsible for the management, administration, operation, and maintenance of the LSS; pursuant to DOE's agreement, gave DOE responsibility for the design, development, and implementation of the LSS; and established the charter of the LSS Advisory Review Panel (LSSARP) to provide consensus guidance on the design and development of the LSS to both NRC and DOE. The LSS was intended to provide a central, shared, federally funded database of licensing information beginning in 1995, the year DOE was expected to submit its application for a construction permit for the repository. The Commission adopted minor amendments further clarifying these procedures in a final rule published on February 26, 1991 (56 FR 7787).

The Licensing Support System Administrator (LSSA) was appointed in January 1989. The LSSARP was formed, holding its first meeting in December 1989. Also in December 1989, well before any serious development work could be started on the LSS, the Department of Energy revised its repository program schedule to extend its anticipated license application date from 1995 to 2001. Consequently, the LSS development schedule was extended.

II. Discussion

The development of the LSS that was devised in the original procedural rules in 10 CFR Part 2, Subpart J, has not been accomplished during the time that has passed since adoption of the rule. Many delays and changes in personnel and program structure have attended the Department of Energy's efforts to develop the LSS. Budgetary shortfalls and the unanticipated length of time that it has taken to develop the licensing application for the repository not only delayed the development of the LSS, but also resulted in several additional years' accumulation of potential licensing information.

Because of the length of time involved and the narrowing of the repository development program, much of the early material thought to be relevant at the time the rule was developed may no longer be relevant to the actual licensing proceeding that may not begin until about 2002. Also because of the extended period of time it has taken to develop the LSS for DOE's use as a document management system, it appears that all accumulated documents may not have been identified and maintained properly for tracking of important repository development decisions. In addition, because document capture may now involve much larger backlogs than originally contemplated, the risk of failing to capture all the material originally required to be placed in the LSS is substantially larger than originally assumed. In order for the current Subpart J rules to apply, the LSSA must certify that the DOE has complied with the requirement to enter all relevant documents in the LSS. Therefore, all of these factors combine to produce the high likelihood that the current rule cannot be implemented as originally envisioned. If not, then 10 CFR part 2, subpart J, will no longer apply. Instead, subpart G, the generally applicable procedures for licensing proceedings, will apply. This means that there would be no pre-license application access to documents.

Although the development of the LSS has remained stalled, the state of technology in document automation and retrieval has overtaken the 1986 technology on which the original LSS was to be based. The use of computers to generate and maintain the complex documents of a party in litigation is widespread and commonplace. The Internet is universally available to tie disparate and geographically dispersed systems together. Readily available commercial software applications can perform the document management functions of the LSS. Therefore, the centralized LSS envisioned at the time the LSS rule was developed has become obsolete. The enormous expense of designing and maintaining a stand-alone system required by the current rules appears to be an unjustified expense, especially when it appears unlikely that the rule will be able to be implemented successfully even if the LSS is created.

Consequently, the Commission is proposing to amend its rules to allow more flexibility to incorporate the advantages of new information management technologies in the procedural rules for the licensing of the geologic repository. This would eliminate the LSS as a uniquely designed stand-alone system, while still maintaining the following primary functions of the LSS as a mechanism for the:

(1) Discovery of documents before the license application is filed;

(2) Electronic transmission of filings by the parties during the proceeding;

(3) Electronic transmission of orders and decisions related to the proceeding; and

(4) Access to an electronic version of the docket.

The Commission believes that the proposed rule would continue to support the model schedule for conducting the licensing proceeding within the 3-year statutory period that was published in the Statement of Considerations for the original 10 CFR part 2, subpart J, rule published on April 14, 1989 (54 FR 14925, 14939).

The proposed rule would eliminate the current prescriptive requirement in 10 CFR part 2, subpart J, for a centralized ''Licensing Support System'' administered by the NRC and therefore also would eliminate the requirement for an LSS Administrator to ensure the viability of the central database. To replace these features of the existing rule, the proposed rule would require that all potential parties, including the NRC and DOE, make their documentary material available in electronic form to all other participants beginning in the pre-license application phase. This requirement is stated without unduly restrictive technological specifications, in order to accommodate flexible implementation consistent with current or future technological developments.

Documentary material would be defined as the material upon which a party intends to rely in support of its position in the licensing proceeding; any material which is relevant to, but does not support, that material or that party's position; and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related ''circulated drafts,'' relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. For the purposes of this rule, the pre-application phase would begin on the date that the President submits the site recommendation to Congress. This timing would allow access to the parties' documentary material enough before DOE submits the license application to allow advance preparation of contentions and discovery requests before the license

application, but late enough in the repository development process to provide meaningful information.

A Pre-License Application Presiding Officer would resolve any disputes over electronic access to documents during the pre-license application phase. Potential parties would be required to certify to the Pre-License Application Presiding Officer that they have complied with the requirement to provide electronic access to their documentary material. The requirements of the current rule for an electronic hearing docket would be retained, as well as the limitations on the permissible forms of discovery after the application is filed.

The Commission is considering two alternatives regarding the LSS Advisory Review Panel. In this proposed rule, because the concept of the LSS would be replaced, the requirement for an LSS Advisory Review Panel would be modified so the panel can advise the Secretary of the Commission regarding standards and procedures for electronic access to documents and for maintenance of the electronic docket. This would require renaming of the advisory committee and redrafting of the committee charter. However, the Commission is also considering the alternative of replacing the Advisory Review Panel with a more informal users group, and particularly requests comments from potential parties to the HLW repository licensing proceeding regarding these two alternative arrangements.

III. Section-by-Section Description of Changes

In § 2.1000, the reference to § 2.709 would be removed because it would require compliance with § 2.708 that would not apply to this subpart.

In § 2.1001, the following definitions would be added, amended, or removed:

ASCII File

This definition would be removed and no longer used in the rule. Prescriptive references to specific technical standards would be removed to allow flexible implementation consistent with developing technology.

Documentary Material

The definition of documentary material would be revised to cover material upon which a party, potential party, or interested governmental participant intends to rely and/or cite in support of its position in the licensing proceeding; any material or other information which is relevant to, but does not support, that material or information or that party's position; and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related ''circulated drafts,'' relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. This definition would be used in the rule in § 2.1003 to define what material must be provided in electronic form for access beginning in the pre-license application phase. Therefore the term ''documentary material'' would be intended to describe the most important body of material and would be defined clearly to require that all parties include electronic access to any relevant material in their possession that does not support their position in the licensing proceeding, as well as providing access to the material that does support their position, and any reports and studies prepared by the party on issues described in the Topical Guidelines, regardless of whether or not they would be relied upon or cited by the party. The scope of the documentary material would still be governed by the topical guidelines.

Electronic Docket

A new definition would be added to describe NRC's electronic information system to receive, distribute, store, and maintain NRC adjudicatory docket materials in the licensing proceeding.

Integrated Electronic Information

A new definition would be added to describe material made available in electronic form to potential parties, parties, or interested governmental participants to the licensing proceeding for the high-level waste geologic repository, either as part of the NRC's pre-license application electronic docket or electronic docket or pursuant to electronic access to documentary material made available by individual potential parties, parties, and interested governmental participants. This is a term for the information access that would replace the LSS in this rule.

LSS Administrator

This term would be eliminated from the rule because the concept of the LSS would also be removed. The Pre-license Application Presiding Officer will resolve disputes about electronic access to documents in the pre-license application phase.

Party

This definition would be revised to add ''affected unit of local government'', as that term is defined in the Nuclear Waste Policy Act of 1982, as amended, and also to refer to that act for the definition of affected Indian tribe. In addition, any affected unit of local government, the host State, and any affected Indian Tribe would be required to file a list of contentions.

Potential Party

This definition would be revised to remove the reference to the LSS, and to substitute the term *integrated electronic information* to describe the material to which the potential party will be given access.

Pre-license Application Electronic Docket

A new definition would be added to describe NRC's electronic information system to receive, distribute, store, and maintain NRC pre-license application docket materials during the pre-license application phase.

Pre-License Application Phase

This definition is being specified for the purposes of this rule to begin on the date that the President submits the site recommendation to the Congress. This date has been chosen to allow access to the potential parties' documentary material enough before the license application to allow advance preparation of contentions and discovery requests before the application is filed, but late enough in the repository development process to provide meaningful information.

Searchable Full Text

This definition would be revised to remove references to ASCII and to the LSS.

Topical Guidelines

A new definition would be added to describe the set of topics set forth in Regulatory Guide 3.69 that are intended to guide the scope of documentary material under this subpart.

Section 2.1002 would be removed because the LSS would no longer be required. Access to integrated electronic information would provide the major functions which the LSS was designed to provide. Paragraphs (c) and (d), which state that participation by the host State in the pre-application phase will not affect its disapproval rights, and that this subpart shall not affect any participant's independent right to receive information, would be incorporated in the revised § 2.1003 as paragraphs (a)(2) and (3).

Section 2.1003 would be revised to describe information that would be required to be made available electronically by all potential parties, parties, and interested governmental

participants (including the NRC and DOE). This information would have to be made available to all other participants beginning in the pre-license application phase, which starts at the date of the President's submission of the site recommendation to the Congress. The requirements of the rule would be simplified to require only that access to an electronic file be provided. All references to specific formats would be removed to allow flexibility in implementation. The Commission intends that a potential party, party, or interested governmental participant might offer electronic access to its documentary material in a number of different ways, including by providing its documents in electronic form either to the NRC or to the DOE, to have the NRC or the DOE maintain the documents for electronic access.

Although the draft rule would require that documentary material be made available electronically beginning on the date of the President's site recommendation to the Congress, the Commission would encourage the earliest feasible availability of documentary material in order to enhance the future smooth operation of the licensing proceeding. The paragraphs relating to evaluations and certifications by the LSS Administrator would be removed because the LSS (and LSSA) concept would be removed. Section 2.1010 states that the Pre-License Application Presiding Officer will resolve any disputes relating to electronic access to documents in the pre-license application phase. Accordingly, the paragraphs which stated that the application would have to be docketed under Subpart G if the LSSA did not certify compliance would be removed, and Subpart J (including specifically referenced sections of Subpart G) would unconditionally embody the rules of procedure for the HLW licensing proceeding.

Section 2.1004 would be revised to provide procedures for providing access to a document that has not previously been provided in electronic form and to delete previous references to the LSS and the LSSA.

Section 2.1005 would be revised to delete reference to the LSS and to add an exclusion of readily available references, such as journal articles or proceedings, which may be subject to copyright.

Section 2.1006 would be revised to refer to providing a document in electronic form and to delete references to the LSS and the LSSA.

Section 2.1007 would be revised to refer to providing systems for access to integrated electronic information rather than providing terminals for access to the LSS. These systems must be maintained by DOE and NRC at the locations specified in the current version of the rule (except for the Uranium Recovery Field Office which no longer exists), beginning in the pre-license application phase.

Section 2.1008 would be revised to allow electronic access to the integrated electronic information to any person who complies with the requirements of Subpart J, including the requirement in § 2.1003 to make documentary material available, and who agrees to comply with the orders of the Pre-license Application Presiding Officer. The previous requirement to petition to the Pre-license Application Presiding Officer would be removed.

Section 2.1009 would be revised to delete references to the LSS and the LSSA, and to refer instead to the responsibility to provide electronic files. The responsible official for each potential party would be required to certify to the Pre-License Presiding Officer that procedures to comply with § 2.1003 have been implemented and that its documentary material has been made electronically available. A new requirement to update the certification at the request of the presiding officer would be added to replace a previous requirement to provide this certification at 6 month intervals.

Section 2.1010 would be revised to delete references to the LSS and the LSSA and to refer instead to electronic access. The reference to petitions for access would be removed to conform to removal of this requirement.

Section 2.1011 is being considered for revision in either of two alternative ways and the Commission requests specific comments on these alternatives. This proposed rule would revise § 2.1011 to reflect that the electronic availability of documentary material that is specified in this rule no longer requires special equipment. The name and functions of the LSS Advisory Review Panel would be amended to delete the reference to the LSS and substitute the purpose of arriving at standards and procedures to facilitate the electronic access to material and to the electronic docket. Because of the broad and non-prescriptive requirements regarding providing electronic files in this proposed rule, the Advisory Review Panel would be very useful in discussing standards and procedures to ensure that all participants are able to access the electronic information. Because the LSS concept would be replaced, and the requirement for an LSS Advisory Review Panel would be modified in the proposed rule to accommodate a new purpose, the advisory committee would have to be renamed and the committee charter would have to be redrafted.

However, the Commission is also considering the alternative of eliminating the requirement for an advisory committee chartered under the Federal Advisory Committee Act, and substituting a more informal voluntary users group to perform the functions of discussing electronic format standards, procedures, and other details. If this option were adopted, the final rule would be revised to refer to the users group. This group would be able to interact using Internet discussion areas (like LSSNet) as well as meetings, video conferences, or teleconferences. This users group would ideally make use of the current LSSARP members' knowledge and experience. The Commission is particularly requesting comment from potential parties to the HLW repository concerning their interest and support for the informal users group alternative.

Section 2.1012(a) would be revised to allow the Director of the NRC Office of Nuclear Material Safety and Safeguards (NMSS) to determine that the application would not be acceptable if it is not able to be accessed through the electronic docket. Section 2.1012(b)(1) would be revised to substitute *integrated electronic information* for *Licensing Support System* so that a person who has had access to the integrated electronic information would not be granted party status in the licensing proceeding if it cannot demonstrate compliance with the requirements of § 2.1003. Section 2.1012 (d) would be revised to substitute *pre-license application electronic docket or electronic docket* for *Licensing Support System* to indicate that access to either the pre-license application electronic docket or the electronic docket may be suspended or terminated for failure to comply with the orders of the Pre-License Application Presiding Officer or the Presiding Officer.

Section 2.1013 would be revised to delete references to the LSS and LSSA and would refer to the provision of information in electronic form. The requirement in § 2.1013(c)(5) to file one signed paper copy of each filing with the Secretary, NRC, would be removed because the electronic docket would not require signed paper copies.

Section 2.1014(c)(4) would delete a reference to the LSS and make the failure of a petitioner to participate in the pre-license application phase a criterion in considering whether to grant a petition to intervene.

Section 2.1017 would use the unavailability of the *electronic docket* instead of the LSS as a justification for extending the computation of time in the proceeding.

Sections 2.1018 and 2.1019 would be revised to delete references to the LSS and instead to refer to providing documents electronically.

In addition, minor editorial changes have been made throughout the proposed rule to improve readability.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The history of the development of the existing rule, 10 CFR part 2, subpart J, and the current regulatory problem are described in the Background and Discussion sections of this notice. To address the regulatory problem, several alternative approaches to amending the regulations in subpart J of part 2 were considered.

Option 1: Existing Rule

This approach would not take advantage of current and future technology. It would require an enormously expensive custom designed system to be developed using old assumptions about technological standards and the universe of ''relevant'' material. At the time of the development of the existing rule, the cost of the LSS was estimated by DOE to be in the $200 million range. Furthermore, given the large backlog that contains a substantial amount of documents that may no longer be relevant because of the unanticipated delay in developing the LSS as initially designed in 1988, there is a substantial chance that it would be impossible for the DOE to achieve, and for the LSSA to certify, compliance with the provisions of the current rule. In this case, the proceeding would have to be conducted under 10 CFR part 2, subpart G, and could result in a protracted discovery phase. In addition to the very costly and ineffective system, the further costs of using this approach are difficult to quantify, however the lengthened discovery phase could prevent the Commission from meeting the statutory deadline for decision on the application. This delay could also result in possible increased spent fuel storage costs for the additional length of the licensing proceeding.

Option 2: 10 CFR Part 2, Subpart G

Because the NRC is developing a new system called the Agency-wide Documents Access and Management System (ADAMS), which will provide an agency-wide electronic docket, it would be possible to rely on existing adjudicatory procedure rules in 10 CFR part 2, subpart G (which will have to be updated to reflect the electronic docket) to conduct the licensing proceeding. However, this approach would not provide pre-license application access to documents and could result in a protracted discovery phase. The costs of using this approach are difficult to quantify. However the lengthened discovery phase could prevent the Commission from meeting the statutory deadline for decision on the application and result in possible increased spent fuel storage costs, as in Option 1.

Option 3: Existing Rule Using a Distributed System

This approach would allow using linked individual Internet sites to serve as the LSS. However, this approach does not solve the problem discussed in Option 1 concerning the requirement to capture a huge backlog of material that may not have been maintained in a manner that would ever permit compliance with the rule, and which may not all be relevant to the future license application. Therefore, the costs of this approach, as in Option 1, would include the possibility that the LSS rule compliance finding could not be made and the proceeding would have to be conducted under 10 CFR part 2, subpart G. A lengthened discovery phase could prevent the Commission from meeting the statutory deadline for decision on the application and result in possible increased spent fuel storage costs, as in Option 1.

Option 4: Revised Rule With More Realistic Document Discovery Approach

This approach would remove the requirement for a central LSS system and LSS Administrator, but would require each potential party to provide for the electronic availability of both the material it intends to rely upon to support its position, any material which does not support that material or that position, and any reports or studies prepared by or for the party, beginning in the pre-application phase (presided over by a Pre-License Application Presiding Officer). This definition of documentary material would provide pre-application access to a more focussed set of the materials most important to the licensing proceeding. It would not require electronic access to the entire backlog of DOE and other parties' material, some of which may no longer be relevant to the licensing proceeding. The electronic docket functionality of the LSS would be provided by the NRC agency-wide system with supervision of the Presiding Officer. Participation in the pre-license application phase would be one criterion for participating in the hearing. After the application is filed, in addition to the electronically available material, discovery would be limited to interrogatories and depositions as in the current rule. The specific method of providing electronic access to documentary would not be specified, which would allow flexibility to accommodate current and future technology advances. Individual parties may give their documents in electronic form to NRC or DOE in order to provide electronic access. Because this rule would unconditionally provide the procedural rules for the HLW licensing proceeding, there would be no last minute danger that the proceeding would have to be conducted under 10 CFR part 2, subpart G.

The Commission believes that Option 4 provides the most effective solution for maintaining the basic functionality of the LSS conceptual design, while most flexibly accommodating current and future technological developments. The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the Addresses heading.

Regulatory Flexibility Certification

The amendments would modify the Commission's rules of practice and procedures. The rule would be amended to allow more widely available electronic access to information before the license application is filed. Participants would be required to make their own documentary material available electronically. This proposed rule would not have a significant economic impact upon a substantial number of small entities. The license applicant for the HLW repository would be the Department of Energy . DOE would not fall within the definition of a ''small entity'' in the NRC's size standards (10 CFR 2.810). Although a few of the intervenors in the HLW

proceeding would likely qualify as small entities, the impact on intervenors or potential intervenors would not be significant. The requirement for participants to make their own documentary material available electronically is stated in a manner that would allow flexibility in implementation. Furthermore, it is consistent with current business practice to create documents electronically. Therefore, the exact additional costs involved in making the documentary materials available electronically are difficult to quantify. However, to avoid those costs, participants would have the option of providing their documents to NRC or DOE to maintain electronic availability. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC hereby certifies that this proposed rule would not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rules in 10 CFR Chapter 1, §§ 50.109, 72.62, and 76.76, do not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in those rules.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954; as amended, the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the Nuclear Regulatory Commission is proposing to adopt the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. l6l, l8l, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by Section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note.) Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. Section 2.1000 is revised to read as follows:

§ 2.1000 Scope of subpart.

The rules in this subpart govern the procedure for applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area noticed pursuant to § 2.101(f)(8) or § 2.105(a)(5). The procedures in this subpart take precedence over the 10 CFR part 2, subpart G, rules of general applicability, except for the following provisions: §§ 2.702, 2.703, 2.704, 2.707, 2.711, 2.713, 2.715, 2.715a, 2.717, 2.718, 2.720, 2.721, 2.722, 2.732, 2.733, 2.734, 2.742, 2.743, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.763, 2.770, 2.771, 2.772, 2.780, 2.781, 2.786, 2.788, and 2.790.

3. Section 2.1001 is amended by removing the definitions of *ASCII File* and *LSS Administrator*; adding definitions of *Electronic docket, Integrated electronic information, Pre-license application electronic docket,* and *Topical Guidelines*; and revising the definitions of *Documentary material, Party, Potential party, Pre-license application phase, and Searchable full text,* to read as follows:

§ 2.1001 Definitions.

* * * * *

Documentary material means any material or other information upon which a party, potential party, or interested governmental participant intends to rely and/or to cite in support of its position in the proceeding for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter; any material or other information that is relevant to, but does not support, that material or information or that party's position; and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related ''circulated drafts,'' relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. The scope of documentary material shall be guided by the topical guidelines in the applicable NRC Regulatory Guide.

* * * * *

Electronic docket means the NRC information system that receives, distributes, stores, and retrieves the Commission's adjudicatory docket materials.

* * * * *

Integrated electronic information means the material that is made available electronically to parties, potential parties, and interested governmental participants to the proceeding for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter, as part of the electronic docket or electronic access to documentary material, beginning in the pre-license application phase.

* * * * *

Party for the purpose of this subpart means the DOE, the NRC staff, the host State, any affected unit of local government as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), any affected Indian Tribe as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), and a person admitted under

§ 2.1014 to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter; provided that a host State, affected unit of local government, or affected Indian Tribe shall file a list of contentions in accordance with the provisions of §§ 2.1014(a)(2) (ii) and (iii).

* * * * *

Potential party means any person who, during the period before the issuance of the first pre-hearing conference order under § 2.1021(d), is given access to the integrated electronic information and who consents to comply with the regulations set forth in subpart J of this part, including the authority of the Pre-License Application Presiding Officer designated pursuant to § 2.1010.

Pre-license application electronic docket means the NRC's electronic information system that receives, distributes, stores, and maintains NRC pre-license application docket materials during the pre-license application phase.

Pre-license application phase means the time period before the license application to receive and possess high-level radioactive waste at a geologic repository operations area is docketed under § 2.101(f)(3). For the purpose of this subpart, this period begins on the date that the President submits the site recommendation to the Congress pursuant to section 114(a)(2)(A) of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10134(a)(2)(A)). .

* * * * *

Searchable full text means the electronic indexed entry of a document that allows the identification of specific words or groups of words within a text file.

Topical Guidelines means the set of topics set forth in Regulatory Guide 3.69, Topical Guidelines for the Licensing Support System, which are intended to guide the scope of ''documentary material''.

§ 2.1002 [Removed and reserved]

4. Section 2.1002 is removed and reserved.

5. Section 2.1003 is revised to read as follows:

§ 2.1003 Availability of material.

(a) Beginning in the pre-license application phase, subject to the exclusions in § 2.1005 and paragraphs (b) and (c) of this section, each potential party, interested governmental participant or party, shall make available to other potential parties, interested government participants or parties—

(1) An electronic file for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, a potential party, interested governmental participant, or party. Concurrent with the production of the electronic file will be an authentication statement that indicates where an authenticated image copy of the document can be obtained.

(2) The participation of the host State in the pre-license application phase shall not affect the State's ability to exercise its disapproval rights under section 116(b)(2) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10136(b)(2).

(3) This subpart shall not affect any independent right of a potential party, interested governmental participant or party to receive information.

(b)(1) Each potential party, interested governmental participant, or party shall make available in electronic image form, subject to the claims of privilege in § 2.1006, graphic-oriented documentary material that includes raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, diagrams and photographs which have been printed, scripted, or hand written. Text embedded within these documents need not be separately entered in searchable full text. Graphic-oriented documents may include—

Calibration procedures, logs, guidelines, data and discrepancies;

(ii) Gauge, meter and computer settings;

(iii) Probe locations;

(iv) Logging intervals and rates;

(v) Data logs in whatever form captured;

(vi) Text data sheets;

(vii) Equations and sampling rates;

(viii) Sensor data and procedures;

(ix) Data Descriptions;

(x) Field and laboratory notebooks;

(xi) Analog computer, meter or other device print-outs;

(xii) Digital computer print-outs;

(xiii) Photographs;

(xiv) Graphs, plots, strip charts, sketches;

(xv) Descriptive material related to the information identified in paragraph (b)(1) of this section.

(2) Each potential party, interested governmental participant, or party shall make available in an electronic file, subject to the claims of privilege in § 2.1006, only a bibliographic header for each item of documentary material that is not suitable for image or searchable full text.

(c) Each potential party, interested governmental participant, or party shall make available electronically a bibliographic header for each documentary material—

(1) For which a claim of privilege is asserted;

(2) Which constitutes confidential financial or commercial information; or

(3) Which constitutes safeguards information under § 73.21 of this chapter.

(d) Basic licensing documents generated by DOE, such as the Site Characterization Plan, the Environmental Impact Statement, and the license application, or by NRC, such as the Site Characterization Analysis, and the Safety Evaluation Report, shall be made available in electronic form by the respective agency that generated the document.

6. Section 2.1004 is revised to read as follows:

§ 2.1004 Amendments and additions.

Any document that has not been provided to other parties in electronic form must be identified in an electronic notice and made available for inspection and copying by the potential party, interested governmental participant, or party responsible for the submission of the document within two days after it has been requested unless some other time is approved by the Pre-License Application Presiding Officer or the Presiding Officer designated for the high-level waste proceeding. The time allowed under this paragraph will be stayed pending Officer action on a motion to extend the time.

7. Section 2.1005 is revised to read as follows:

§ 2.1005 Exclusions.

The following material is excluded from the requirement to provide electronic access, either pursuant to § 2.1003, or through derivative discovery pursuant to § 2.1019(i)—

(a) Official notice materials;

(b) Reference books and text books;

(c) Material pertaining exclusively to administration, such as material related to budgets, financial management, personnel, office space, general distribution memoranda, or procurement, except for the scope of work on a procurement related to repository siting, construction, or operation, or to the transportation of spent nuclear fuel or high-level waste;

(d) Press clippings and press releases;

(e) Junk mail;

(f) Preferences cited in contractor reports that are readily available;

(g) Classified material subject to subpart I of this part;

(h) Readily available references, such as journal articles and proceedings, which may be subject to copyright.

8. Section 2.1006 is revised to read as follows:

§ 2.1006 Privilege.

(a) Subject to the requirements in § 2.1003(c), the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in § 2.790 may be asserted by potential parties, interested governmental participants, and parties. In addition to Federal agencies, the deliberative process privilege may also be asserted by State and local government entities and Indian Tribes.

(b) Any document for which a claim of privilege is asserted, but is denied in whole or in part by the Pre-License Application Presiding Officer or the Presiding Officer, must be provided in electronic form by the party, interested governmental participant, or potential party that asserted the claim to—

(1) The other participants; or

(2) To the Pre-License Application Presiding Officer or to the Presiding Officer, for entry into a Protective Order file, if the Pre-License Application Presiding Officer or the Presiding Officer so directs under §§ 2.1010(b) or 2.1018(c).

(c) Notwithstanding any availability of the deliberative process privilege under paragraph (a) of this section, circulated drafts not otherwise privileged shall be provided for electronic access pursuant to § 2.1003(a).

9. Section 2.1007 is being revised to read as follows:

§ 2.1007 Access.

(a)(1) A system to provide electronic access to the integrated electronic information shall be provided at the headquarters of DOE, and at all DOE Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, beginning in the pre-license application phase.

(2) A system to provide electronic access to the integrated electronic information shall be provided at the headquarters Public Document Room of NRC, and at all NRC Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, and at the NRC Regional Offices beginning in the pre-license application phase.

(3) The systems for electronic access specified in paragraphs (a)(1) and (a)(2) of this section shall include locations at Las Vegas, Nevada; Reno, Nevada; Carson City, Nevada; Nye County, Nevada; and Lincoln County, Nevada.

(b) Public availability of paper and electronic copies of the records, as well as duplication fees, and fee waiver for those records, is governed by the Freedom of Information Act (FOIA) regulations of the respective agencies.

(c) Documents to which electronic access has been provided by other parties, potential parties, or interested governmental participants pursuant to this subpart shall not be considered as agency records of the Nuclear Regulatory Commission or the Department of Energy unless and until they have been entered into the docket of the proceeding pursuant to § 2.702 for purposes of the FOIA, 5 U.S.C. 552, if these documents remain under the custody and control of the agency or organization that identified the documents. Requests for access pursuant to the FOIA to documents submitted by a Federal agency shall be transmitted to that Federal agency.

10. Section 2.1008 is revised to read as follows:

§ 2.1008 Potential parties.

Any person who complies with the regulations in this subpart, including § 2.1003, and agrees to comply with the orders of the Pre-License Application Presiding Officer designated under § 2.1010, may have electronic access to the integrated electronic information made available pursuant to this subpart in the pre-license application phase.

11. Section 2.1009 is revised to read as follows:

§ 2.1009 Procedures.

(a) Each potential party, interested governmental participant, or party shall—

(1) Designate an official who will be responsible for administration of its responsibility to provide electronic files of documentary material ;

(2) Establish procedures to implement the requirements in § 2.1003;

(3) Provide training to its staff on the procedures for implementation of the responsibility to provide electronic files of documentary material;

(4) Ensure that all documents carry the submitter's unique identification number;

(5) Cooperate with the advisory review process established by the NRC under § 2.1011(c).

(b) The responsible official designated pursuant to paragraph (a)(1) of this section shall certify to the Pre-License Application Presiding Officer that the procedures specified in paragraph (a)(2) of this section have been implemented, and that to the best of his or her knowledge, the documentary material specified in § 2.1003 has been identified and made electronically available. Upon order of a duly appointed presiding officer, the responsible official shall update this certification.

12. Section 2.1010 is revised to read as follows:

§ 2.1010 Pre-License Application Presiding Officer.

(a)(1) The Commission may designate one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority on the matter (Pre-License Application Presiding Officer) to rule on disputes over the electronic availability of documents during the pre-license application phase, including disputes relating to privilege, and disputes relating to the implementation of the recommendations of the Advisory Review Panel established under § 2.1011(e).

(2) The Pre-License Application Presiding Officer shall be designated before the integrated electronic information is scheduled to be available.

(b) The Pre-License Application Presiding Officer shall rule on any claim of document withholding to determine—

(1) Whether it is documentary material within the scope of this subpart;

(2) Whether the material is excluded under § 2.1005;

(3) Whether the material is prvileged or otherwise excepted from disclosure under § 2.1006;

(4) If privileged, whether it is an absolute or qualified privilege;

(5) If qualified, whether the document should be disclosed because it is necessary to a proper decision in the proceeding;

(6) Whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of nondisclosure) as may be necessary and appropriate to limit the disclosure to potential participants, interested governmental participants and parties in the proceeding, or to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act of 1954, as amended, is received and possessed by a potential party, interested governmental participant, or party, other than the Commission staff, it shall also be protected according to the requirements of § 73.21 of this chapter. The Pre-License Application Presiding Officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards

Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the Pre-License Application Presiding Officer for violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act of 1954, as amended, the entity in violation may be subject to a civil penalty imposed pursuant to § 2.205. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act of 1954, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed to be an order issued under section 161b of the Atomic Energy Act of 1954, as amended.

(c) Upon a final determination that the material is relevant, and not privileged, exempt from disclosure, or otherwise exempt from production under § 2.1005, the potential party, interested governmental participant, or party who asserted the claim of withholding must make the document available in accordance with the provisions of this subpart within two days.

(d) The service of all pleadings and answers, orders, and decisions during the pre-license application phase shall be made according to the procedures specified in § 2.1013(c) and entered into the pre-license application electronic docket.

(e) The Pre-License Application Presiding Officer shall possess all the general powers specified in §§ 2.721(c) and 2.718.

(f) The Commission, in designating the Pre-License Application Presiding Officer in accordance with paragraphs (a) (1) and (2) of this section, shall specify the jurisdiction of the Officer.

13. Section 2.1011 is revised to read as follows:

§ 2.1011 Management of electronic information.

(a) Electronic document production and the electronic docket are subject to the provisions of this subpart.

(b) The NRC, DOE, parties, and potential parties participating in accordance with the provisions of this subpart shall be responsible for obtaining the computer system necessary to comply with the requirements for electronic document production and service.

(c)(1) The Secretary of the Commission shall establish an Advisory Review Panel composed of the Advisory Committee members identified in paragraph (c)(2) of this section who wish to serve. The Secretary of the Commission shall have the authority to appoint additional representatives to the Advisory Review Panel consistent with the requirements of the Federal Advisory Committee Act, 5 U.S.C. app. I, giving particular consideration to potential parties, parties, and interested governmental participants who were not members of the NRC HLW Licensing Support System Advisory Committee.

(2) The Advisory Committee membership will initially include the State of Nevada, a coalition of affected units of local government in Nevada who were on the NRC High-Level Waste Licensing Support System Advisory Committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups who were on the NRC High-Level Waste Licensing Support System Advisory Committee and such other members as the Commission may from time to time designate to perform the responsibilities in paragraph (d) of this section.

(d)(1) The Advisory Review Panel shall provide advice to—

(i) NRC on the fundamental issues of the type of computer system necessary to access the integrated electronic information effectively under paragraph (b) of this section; and

(ii) The Secretary of the Commission on the operation and maintenance of the electronic docket under the Commission's Rules of Practice (10 CFR part 2).

(2) The responsibilities of the Advisory Review Panel shall include advice on—

(i) Format standards for providing electronic access to documentary material to the parties, interested governmental participants, or potential parties;

(ii) The procedures and standards for the electronic transmission of filings, orders, and decisions during both the pre-license application phase and the high-level waste licensing proceeding;

(iii) Other duties as specified in this subpart or as directed by the Secretary of the Commission.

14. In § 2.1012, paragraphs (a), (b)(1), and (d) are revised to read as follows:

§ 2.1012 Compliance.

(a) In addition to the requirements of § 2.101(f), the Director of the NRC's Office of Nuclear Materials Safety and Safeguards may determine that the tendered application is not acceptable for docketing under this subpart if the Secretary of the Commission determines that it cannot be effectively accessed through the Commission's electronic docket.

(b)(1) A person, including a potential party given access to the integrated electronic information under this subpart, shall not be granted party status under § 2.1014, or status as an interested governmental participant under § 2.715(c), if it cannot demonstrate substantial and timely compliance with the requirements of § 2.1003 at the time it requests participation in the high-level waste licensing proceeding under § 2.1014 or § 2.715(c).

* * * * *

(d) Access to the pre-license application electronic docket or electronic docket may be suspended or terminated by the Pre-License Application Presiding Officer or the Presiding Officer for any potential party, interested governmental participant or party who is in noncompliance with any applicable order of the Pre-License Application Presiding Officer or the Presiding Officer or the requirements of this subpart.

15. Section 2.1013 is revised to read as follows:

§ 2.1013 Use of the electronic docket during the proceeding.

(a)(1) Pursuant to § 2.702, the Secretary of the Commission will maintain the official docket of the proceeding on the application for a license to receive and possess waste at a geologic repository operations area.

(2) Commencing with the docketing in an electronic form of the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter, the Secretary of the Commission, upon determining that the application can be properly accessed under the Commission's electronic docket rules, will establish an electronic docket to contain the official record materials of the high-level radioactive waste licensing proceeding in searchable full text, or for material that is not suitable for entry in searchable full text, by header and image, as appropriate.

(b) Absent good cause, all exhibits tendered during the hearing must have been made available to the parties in electronic form before the commencement of that portion of the hearing in which the exhibit will be offered. The electronic docket contains a list of all exhibits, showing where in the transcript each was marked for identification and where it was received into evidence or rejected. Transcripts will be entered into the electronic docket on a daily basis in order to

provide next-day availability at the hearing.

(c)(1) All filings in the adjudicatory proceeding on the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter shall be transmitted electronically by the submitter to the Presiding Officer, parties, and the Secretary of the Commission, according to established format requirements. Parties and interested governmental participants will be required to use a password security code for the electronic transmission of these documents.

(2) Filings required to be served shall be served upon either the parties and interested governmental participants, or their designated representatives. When a party or interested governmental participant has appeared by attorney, service must be made upon the attorney of record.

(3) Service upon a party or interested governmental participant is completed when the sender receives electronic acknowledgment (''delivery receipt'') that the electronic submission has been placed in the recipient's electronic mailbox.

(4) Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, by—

(i) Electronic acknowledgment (''delivery receipt'');

(ii) The affidavit of the person making the service; or

(iii) The certificate of counsel.

(5) All Presiding Officer and Commission issuances and orders will be transmitted electronically to the parties and interested governmental participants.

(d) Online access to the electronic docket, including a Protective Order File if authorized by a Presiding Officer, shall be provided to the Presiding Officer, the representatives of the parties and interested governmental participants, and the witnesses while testifying, for use during the hearing. Use of paper copy and other images will also be permitted at the hearing.

16. In § 2.1014, paragraph (c)(4) is revised to read as follows:

§ 2.1014 Intervention.

* * * * *

(c) * * *

(4) The failure of the petitioner to participate as a potential party in the pre-license application phase.

* * * * *

17. Section 2.1017 is revised to read as follows:

§ 2.1017 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party, potential party, or interested governmental participant, has the right or is required to do some act within a prescribed period after the service of a notice or other document upon it, one day shall be added to the prescribed period. If the electronic docket is unavailable for more than four access hours of any day that would be counted in the computation of time, that day will not be counted in the computation of time.

18. In § 2.1018, paragraph (a)(1) and the introductory text of paragraph (e) are revised to read as follows:

§ 2.1018 Discovery.

(a)(1) Parties, potential parties, and interested governmental participants in the high-level waste licensing proceeding may obtain discovery by one or more of the following methods:

(i) Access to the documentary material made available pursuant to § 2.1003 ;

(ii) Entry upon land for inspection, access to raw data, or other purposes pursuant to § 2.1020;

(iii) Access to, or the production of, copies of documentary material for which bibliographic headers only have been submitted pursuant to § 2.1003 (b) and (c);

(iv) Depositions upon oral examination pursuant to § 2.1019;

(v) Requests for admission pursuant to § 2.742;

(vi) Informal requests for information not made electronically available, such as the names of witnesses and the subjects they plan to address; and

(vii) Interrogatories and depositions upon written questions, as provided in paragraph (a)(2) of this section.

* * * * *

(e) A party, potential party, or interested governmental participant who has made available in electronic form all material relevant to any discovery request or who has responded to a request for discovery with a response that was complete when made is under no duty to supplement its response to include information thereafter acquired, except as follows:

* * * * *

19. In § 2.1019, paragraphs (d), (e), and (i) are revised to read as follows:

§ 2.1019 Depositions.

* * * * *

(d) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature unless the deponent is ill or cannot be found or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly transmit an electronic copy of the deposition to the Secretary of the Commission for entry into the electronic docket.

(e) Where the deposition is to be taken on written questions as authorized under § 2.1018(a)(2), the party or interested governmental participant taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party and interested governmental participant with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be asked. Within ten days after service, any other party or interested governmental participant may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, returned, and transmitted in electronic form to the Secretary of the Commission for entry into the electronic docket as in the case of a deposition on oral examination.

* * * * *

(i)(1) After receiving written notice of the deposition under paragraph (a) or paragraph (e) of this section, and ten days before the scheduled date of the deposition, the deponent shall submit an electronic index of all documents in his or her possession, relevant to the subject matter of the deposition, including the categories of documents set forth in paragraph (i)(2) of this section, to all parties and interested governmental participants. The index shall identify those records which have already been made available electronically. All documents that are not identical to documents already made available electronically , whether by reason of subsequent modification or by the addition of notations, shall be treated as separate documents.

(2) The following material is excluded from the initial requirements of § 2.1003 to be made available electronically, but is subject to derivative discovery under paragraph (i)(1) of this section—

(i) Personal records;

(ii) Travel vouchers;

(iii) Speeches;
(iv) Preliminary drafts;
(v) Marginalia.

(3) Subject to paragraph (i)(6) of this section, any party or interested governmental participant may request from the deponent a paper copy of any or all of the documents on the index that have not already been provided electronically.

(4) Subject to paragraph (i)(6) of this section, the deponent shall bring a paper copy of all documents on the index that the deposing party or interested governmental participant requests that have not already been provided electronically to an oral deposition conducted pursuant to paragraph (a) of this section, or in the case of a deposition taken on written questions pursuant to paragraph (e) of this section, shall submit such documents with the certified deposition.

(5) Subject to paragraph (i)(6) of this section, a party or interested governmental participant may request that any or all documents on the index that have not already been provided electronically, and on which it intends to rely at hearing, be made electronically available by the deponent.

(6) The deposing party or interested governmental participant shall assume the responsibility for the obligations set forth in paragraphs (i)(1), (i)(3), (i)(4), and (i)(5) of this section when deposing someone other than a party or interested governmental participant.

* * * * *

Dated at Rockville, MD, this 6th day of November, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–29884 Filed 11–12–97; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

The Freedom of Information Act and Privacy Act

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to revise its regulations governing the disclosure of information pursuant to the Freedom of Information Act (FOIA) to reflect recent changes to FOIA brought about by the enactment of the Electronic Freedom of Information Act Amendments of 1996 (E–FOIA). The proposed rule, among other things, sets forth new procedures NCUA will employ to implement provisions of E–FOIA, such as expedited treatment of requests and multi-track processing. The proposed rule also clarifies the information which must be included in FOIA requests so that NCUA can process them. Other proposed changes to the rule are designed to provide guidance to the public on how to obtain records contained in the files of the Office of Inspector General.

DATES: Comments must be submitted on or before January 12, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Dianne Salva, Staff Attorney, or Sheila Albin, Associate General Counsel, (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Freedom of Information Act (FOIA) was enacted in 1966 to establish the right of any member of the public to obtain access to government information. FOIA was amended several times before 1996, when the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104–231, was enacted. E–FOIA has twin goals of making records contained in government files more easily accessible to the public and improving administration of FOIA programs in the agencies. In particular, Congress moved to amend the FOIA because it found that government agencies were increasingly using computers to conduct agency business and store valuable agency records and information. When the Senate passed FOIA in 1966, the government is reported to have had just 1,826 computers in use. By 1994, in addition to the proliferation of individual personal computers used by government employees, the number of government computers had climbed to almost 35,000. In recognition of the vast amount of information the government maintains in electronic format, E–FOIA was designed to ensure continued public access to government information, including that maintained in electronic format.

FOIA ensures that the public has access to government information by requiring agencies to disclose information in three ways. First, FOIA requires agencies to disclose basic information about agency structure and general rules of procedure within the agency by publication in the **Federal Register**. Second, FOIA requires agencies to make certain categories of records available for the public to inspect and copy. Many agencies have established public reading rooms to comply with this requirement. And, third, FOIA requires agencies to respond to individual requests for other specific agency records. Records must be released unless one or more of FOIA's nine statutory exemptions applies.

Under E–FOIA, public access to ''reading room'' records, which are those records that must be made available for inspection and copying, will be enhanced in two ways. The categories of records which fall within the ''reading room'' provision of FOIA have been expanded. Previously, three categories of records were required to be made available for inspection and copying: Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; and administrative staff manuals and instructions to staff that affect a member of the public. Under E–FOIA two new categories have been added: Records released under the FOIA after March 31, 1997, which the agency determines have become or are likely to become the subject of subsequent requests, and a general index of the new category of records.

Public access to reading room records will be further enhanced by the provision in E–FOIA which requires that agencies make their reading room records available electronically, if they are created by the agency on or after November 1, 1996. The ''electronic reading room'' can be implemented by placing records on the internet.

As for individual requests, E–FOIA clarifies that reasonable efforts must be made to search for records electronically. It also requires agencies to provide requesters with records in the form or format the requester chooses, if the agency can readily do so. Perhaps most fundamental to the new law is its provision that clarifies that records, if they meet other legal requirements, are subject to FOIA even though they are maintained in electronic format.

The other goal of E–FOIA was to improve the administration of FOIA programs in the agencies. Congress found that due to a lack of resources, some agencies suffered stubborn